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IN THE

# Supreme Court of the United States

Number 689

October Term, 1958

HUBERT R. GROGAN,

*Petitioner in Certiorari*

vs.

UNITED STATES OF AMERICA

**Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit**

---

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IN THE

# Supreme Court of the United States

**Number**.....

**October Term, 1958**

HUBERT R. GROGAN,

*Petitioner in Certiorari*

vs.

UNITED STATES OF AMERICA

**Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit**

Now comes HUBERT R. GROGAN, petitioner in certiorari, and petitions this Honorable Court for the writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

## SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

On May 7, 1957, in Gainesville, Georgia, a number of federal officers saw petitioner driving a 1954 Ford 1½ ton Van Truck on East Washington Street, one of the

main streets of the city, and at about 6:50 P.M. during the daylight hours. Petitioner drove the truck past the federal building, at which time petitioner threw up one of his hands and turned his face away from the direction of the officers. Some of the federal agents had previously thereto, (about a week to ten days) received reports of sales of sugar and other commodities to petitioner by dealers on other dates. The truck was closed, and the federal officers were not able to ascertain by the use of their senses the contents of the truck. The officers knew at that time that petitioner had been placed on probation previously thereto for violating the liquor laws. The truck appeared to the officers to be loaded when it drove past their sight.

The officers had no knowledge or information of what was on the truck nor did they have any report about that particular trip of the vehicle or that particular load." (Rec. 56.) The trial judge found as a fact that after the reports had been received by the officers, they "had ample time in which to obtain a search warrant but the reason they did not obtain a search warrant was because the vehicle was in constant transit and they had no knowledge of where the materials would be loaded upon or removed from the vehicle." (Rec. 56, Findings of Fact.)

After the officers stopped the vehicle, one of them asked petitioner for his driver's license and asked him what he had on the truck, whereupon he replied that he had sugar and malt. The officers then opened the doors of the panel truck and discovered the contents, 88 sacks of sugar, 8 sacks of malt sprouts, 150 cases of glass jars and 50 pounds of dry yeast. The vehicle and con-

tents were then seized by the officers and the petitioner placed under arrest on federal charges.

The United States filed its libel of information against the vehicle and contents, and petitioner, as owner thereof, filed his claim, defending on the ground that the seizure was in pursuance of an illegal and unlawful search of the claimant; and without a proper or lawful warrant either of arrest or to search, and said search and seizure were without probable or reasonable cause; and asked that the vehicle and contents be ordered suppressed as evidence and returned to the petitioner.

The trial judge overruled the motion to suppress and decreed the vehicle and contents forfeited. Based upon this same violation the trial judge also revoked petitioner's probation. Separate appeals were made by petitioner to the United States Court of Appeals for the Fifth Circuit, where it was stipulated that the evidence in the civil action would be considered in determining the probation revocation.

## JURISDICTION

(a) The judgment of the Court of Appeals was entered on November 19, 1958, in Number 17487, involving the forfeiture proceeding, and on December 9, 1958, in Number 17269, involving the revocation of probation. Petitions for rehearing were denied in both cases on January 12, 1959. The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. 1254 (1), and under and by virtue of 18 U.S.C. 3772 and within the time prescribed in Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934 (292 U.S. 661, 666, 54 S.Ct. XXXIX).

(b) The constitutional provision of the Constitution of the United States, the construction of which is involved in this application for certiorari, is as follows:

Amendment Four, United States Constitution.

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

(c) This petition for certiorari is being filed in this Court within 30 days from the date of the judgments denying the petitions for rehearing.

(d) The nature of the case and the rulings of the Court were such as to bring the case within the jurisdictional provisions relied upon, and the grounds upon which it is contended that the questions involved are substantial are as follows:

1. The United States Court of Appeals for the Fifth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

2. The United States Court of Appeals for the Fifth Circuit has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

3. The United States Court of Appeals for the Fifth Circuit in this case has rendered a decision in conflict with the decision of the United States Court of Appeals for the District of Columbia on the same matter.

4. The United States Court of Appeals for the Fifth Circuit has decided a question of gravity and importance involving federal criminal procedure as it relates to searches and seizures of moving vehicles without warrant.

## THE QUESTIONS PRESENTED

1. Whether a motion to suppress evidence is an available defense to a claimant in a civil proceeding to forfeit a vehicle and its contents alleged to have been used in violation of the Internal Revenue laws.

2. Whether the act of federal officers in stopping a person on a public highway was an arrest within the meaning of the law, where no misdemeanor had been committed in their presence prior thereto and no reasonable cause existed to suspect or believe that a felony had been or was being committed.

3. Whether the circumstances within the knowledge of the officers were sufficient to authorize them to stop the petitioner on a public highway and search his vehicle without a warrant.

4. Whether information imparted to federal officers more than a week in advance is sufficient to authorize them to search a vehicle without a warrant, when that information related to other transactions not related to the specific incident upon which the search was based.

5. Whether federal officers having no knowledge of where materials would be loaded upon or removed from a vehicle, but having information as to past purchases of raw materials, are excused from the necessity of obtaining a search warrant because of that fact alone.

6. Whether information of purchases more than a

week old of raw materials amounts to probable cause authorizing a search of a vehicle without a warrant, where no crime is being committed in the presence of the federal officers.

## REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. The decision of the United States Court of Appeals for the Fifth Circuit in these cases, holding in effect that mere probable cause to believe that a misdemeanor has been or is being committed would be sufficient to authorize the search of a vehicle without a warrant is in conflict with the holding of the United States Court of Appeals for the District of Columbia in the case of Hanna v. United States, 260 Fed. 2nd, 723, decided Oct. 2, 1958, advance sheet of January 12, 1959.

2. The United States Court of Appeals ignored the fact that the search of the vehicle commenced as soon as the federal agents stopped it, and that the stopping of the vehicle on the public highway amounted to an arrest within the meaning of the law, rendering the further statement by the petitioner incidental to such arrest.

3. The United States Court of Appeals for the Fifth Circuit erred in deciding that "The seizure of property, the title to which has been forfeited to the United States, is to be distinguished from the exclusion of evidence secured through an unlawful search and seizure." The Court of Appeals, in so holding, has overlooked and ignored the basic principal of the exclusionary rule that the government may not offer proof of such fact in a federal court, and that the lawful proof of the violation

is just as essential in a forfeiture proceeding as in any other.

## APPENDIX

Petitioner herein appends to this petition a copy of the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in cases numbered 17187 and 17269.

Respectfully submitted.

WESLEY R. ASINOF,
Attorney for Petitioner
419 Atlanta National Bldg.
Atlanta, Georgia

IN THE

# United States Court of Appeals

## FOR THE FIFTH CIRCUIT

No. 17269

HUBERT ROYCE GROGAN,

*Appellant,*

versus

UNITED STATES OF AMERICA,

*Appellee.*

**Appeal from the United States District Court for the Northern District of Georgia**

(December 9, 1958.)

Before RIVES, TUTTLE and BROWN, Circuit Judges.

PER CURIAM: This appeal from a revocation of a suspended sentence for violation of probation is related to, and here largely controlled by, *Grogan, Claimant v. United States* (No. 17187), 5 Cir., 1958, ... F. 2d ... It was that episode of May 7, 1957, when he was arrested while driving a truck loaded with a large quantity of sugar, malt, yeast, and one-half-gallon fruit jars which

precipitated the legal actions which now beset Grogan.[1] The Court revoked the probation and imposed a sentence of eighteen months.

Grogan assigns but three errors.[2] The first two are patently unfounded. By stipulation the Court was to, and did, consider all of the evidence, subject only to the motion to suppress for unlawful search and seizure, heard earlier in the forfeiture case (No. 17187). The third, while certainly arguable with propriety at the time it was made, has now been foreclosed by our decision in No. 17187. At the same time it eliminated any question for our decision whether, as the District Court stated as an alternative ground, he could nevertheless take into account, in determining general compliance with the terms of probation, some of the events of May 7 even though the search and seizure were ultimately held illegal. Certainly there is no showing generally that the Court failed to follow the proper principles covering the revocation of probation. *Manning v. United States*, 5 Cir., 1947, 161 F. 2d 827, cert. denied, 332 U.S.

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1. There were proceedings on three fronts.

*First*, No. 17187, . . . F. 2d . . ., was a libel under 26 USCA §§7301, 7302, for forfeiture of the 1954 model Ford truck together with its cargo of moonshine contraband. Forfeiture was affirmed November 19, 1958, by our decision, . . . F. 2d . . .

*Second*, Grogan was indicted for the incident of May 7, 1957. On a jury trial Grogan was convicted but imposition of sentence has been withheld pending determination of No. 17187 and this case.

*Third*, the United States Probation Officer filed the motion of June 24, 1957 to revoke Grogan's probation because of the incident of May 7. That is the subject of this case, No. 17269.

2. "1. The Court erred in granting the motion to revoke the probation without evidence to support the allegations of fact.

"2. The Court erred in revoking the probation in that there was no evidence to sustain the allegations of fact, and in deciding the issue on matters within the pesonal knowledge of the trial judge and not offered in the record of the trial of this case.

"3. The Court erred in not giving consideration to the motion to suppress as having been previously urged in Case No. 4952 United States District Court for the Northern District of Georgia, same being a civil action for the forfeiture of a vehicle and raw materials."

792, 92 L. Ed. 374; *Dillingham v. United States*, 5 Cir., 1935, 76 F. 2d 35; *Kaplan v. United States*, 8 Cir., 1956, 234 F. 2d 345; *Nelson v. United States*, 10 Cir., 1955, 225 F. 2d 902; *Hensley v. United States*, 5 Cir., 1958, 257 F. 2d 681.

AFFIRMED.

A true copy
Test:

/s/ EDWARD W. WADSWORTH

EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

## JUDGMENT

**Extract from the Minutes of December 9, 1958.**

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**No. 17269**

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HUBERT ROYCE GROGAN,

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

IN THE

# United States Court of Appeals

## FOR THE FIFTH CIRCUIT

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**No. 17187**

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HUBERT R. GROGAN, Claimant, and
RUBY ALENE ANDERSON, Surety,

*Appellants,*

versus

UNITED STATES OF AMERICA,

*Appellee.*

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**Appeal from the United States District Court for the Northern District of Georgia**

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(November 19, 1958.)

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Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

JONES, Circuit Judge: The appellant, Hubert R. Grogan, was on probation from a liquor law violation. Our references to the appellant apply to Grogan. His co-appellant is before us because of her liability as surety. Treasury Agents had information that appellant had made several purchases of large quantities of sugar and malt in the proportions usually used for making moonshine whiskey. The Treasury Agents observed him driv-

ing a truck, apparently heavily loaded, on the streets of Gainesville, Georgia. As the appellant drove by he attempted to shield his face from view with his hand and arm. The officers followed the appellant and stopped him. In response to a question as to "what he had on" the appellant answered "eighty-eight bags." He was asked where he was taking it and he said "Dawsonville," but he was headed away from rather than in the direction of that place. He said he was going to sell the sugar but didn't know who would purchase it. He admitted that he had no business license and no place of business. The officers opened the truck and found 88 hundred-pound bags of sugar, along with rye meal, malt, yeast and 130 cases of half-gallon glass jars. The United States, under the authority of 26 U.S.C.A. §§ 7301, 7302, filed its libel of information seeking the forfeiture of the truck and its contents. The appellant moved to suppress the vehicle and its contents alleging that the search and seizure were made without a warrant and without probable or reasonable cause. The motion to suppress was overruled and denied, and a judgment of forfeiture was entered. From the judgment an appeal has been taken. The asserted error, as stated by the appellant, is:

> "* * * in overruling the motion to suppress, in that the agents had no probable cause to believe that a felony had been or was being committed by appellant, no misdemeanor was being then committed in their presence that could be ascertained by the use of their senses, and they had sufficient time to procure a search warrant before making the search."

Primary reliance is placed by the appellant upon the opinion of this Court in *Clay v. United States*, 5th Cir. 1956, 239 F. 2d 196. This opinion illustrates and applies

the doctrine that a lawful arrest without a warrant, and a lawful search incident to such arrest, can be made only if a misdemeanor has been committed in the presence of the officer, or if the officer believes, upon reasonable and probable cause, that a felony has been committed. This doctrine was applied in the Clay case to the arrest of a person and the fact that he was in an automobile was, in the language of the Court, "purely incidental."

The officers who seized the truck here involved and its contents had information that the appellant had been purchasing raw materials for the moonshine industry and hauling them in the truck which was seized. The appellant's prior activity in illegal liquor dealings was known to the officers. His effort to conceal his identity as he drove by was a suspicious circumstance. The officers were justified in stopping and searching the truck upon a public thoroughfare without a warrant. *Carroll v. United States*, 267 U. S. 132, 45 S. Ct. 280, 69 L. Ed. 543; *Husty v. United States*, 282 U. S. 694, 51 S. Ct. 240, 75 L. Ed. 629, 74 A.L.R. 1407; *Brinegar v. United States*, 338 U. S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879, reh. den. 338 U. S. 839, 70 S. Ct. 31, 94 L. Ed. 513; *Cannon v. United States*, 5th Cir. 1946, 158 F. 2d 952, cert. den. 330 U. S. 839, 67 S. Ct. 980, 91 L. Ed. 1286; 4 Wharton's Criminal Law 110 et seq. § 1537.

The seizure of property, the title to which has been forfeited to the United States is to be distinguished from the exclusion of evidence secured through an unlawful search and seizure. In the one case the Government is entitled to the possession of the property, in the other it is not. *Sanders v. United States*, 5th Cir. 1953, 201 F. 2d 158; *United States v. One 1956 Ford Tudor*

*Sedan*, 4th Cir. 1958, 253 F. 2d 725. And see *Turner v. Camp*, 5th Cir. 1941, 123 F. 2d 840. The search and seizure were based on probable cause and were proper. But were it otherwise the claimant would have no right to repossess the property forfeited to the United States.

The judgment of forfeiture is

AFFIRMED.

A true copy
Test:
/s/ EDWARD W. WADSWORTH

EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

# JUDGMENT

**Extract from the Minutes of November 19, 1958.**

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**No. 17187**

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HUBERT R. GROGAN, Claimant, and
RUBY ALENE ANDERSON, Surety,

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is here ordered and adjudged by this Court that the judgment of forfeiture in this cause be, and the same is hereby, affirmed.

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Office Supreme Court, U.S.
FILED
MAR 10 1959
JAMES R. BROWNING, Clerk

No. 689

# In the Supreme Court of the United States

OCTOBER TERM, 1958

HUBERT R. GROGAN, PETITIONER

*v.*

UNITED STATES OF AMERICA

HUBERT R. GROGAN, CLAIMANT, AND RUBY ALENE ANDERSON, SURETY, PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
*Solicitor General,*
MALCOLM ANDERSON,
*Assistant Attorney General,*
BEATRICE ROSENBERG,
FELICIA DUBROVSKY,
*Attorneys,*
*Department of Justice, Washington 25, D.C.*

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## CITATIONS


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# In the Supreme Court of the United States

OCTOBER TERM, 1958

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No. 689

HUBERT R. GROGAN, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

HUBERT R. GROGAN, CLAIMANT, AND RUBY ALENE ANDERSON, SURETY, PETITIONERS

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals in the criminal case (Pet. 8–10) is reported at 261 F. 2d 86. The opinion in the forfeiture case (Pet. 13–15) is not yet reported.

### JURISDICTION

The judgment of the Court of Appeals in the criminal case was entered on December 9, 1958 (Pet. 11), and in the forfeiture case, on November 19, 1958

(Pet. 16). Petitions for rehearing were denied on January 12, 1959 (see Pet. 3). The petition for writs of certiorari was filed on February 7, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether there was sufficient reasonable cause to search a heavily laden truck belonging to petitioner, who was on probation for violation of federal liquor laws, where the officers knew petitioner had been using the truck to transport materials used in the illicit manufacture of whiskey.

## STATUTE INVOLVED

26 U.S.C. 7301 provides as follows:

§ 7301. *Property subject to tax.*

* * * * *

(b) *Raw Materials.*

All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

* * * * *

(c) *Conveyances.*

Any property * * * used to transport or for the deposit or concealment of property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

## STATEMENT

Petitioner is seeking certiorari from the judgments in two related cases—one involving the revocation of probation of a 1955 judgment of conviction for the violation of the federal liquor law. Imposition of sentence on that conviction was suspended in 1955 and petitioner was placed on probation for a period of two years. The terms of the probation order required that "the defendant shall conduct himself as a law-abiding, industrious citizen * * *" (R.R.[1] 6–8). In 1958, that probation was revoked when petitioner was found transporting materials usually used in the manufacture of alcohol. The other judgment involves the forfeiture by the United States under 26 U.S.C. 7301 and 7302 of the truck and the materials found therein. Both judgments were affirmed on appeal (Pet. 11, 16).

The following evidence was adduced in both cases:[2]

Federal revenue agents had knowledge prior to May 7, 1957, the day on which petitioner's truck was seized and he was arrested, that he was on probation for a federal alcohol violation, that he had a reputation as a known federal liquor violator, and that for several weeks, beginning on April 25, 1957, he had been buying and hauling raw materials commonly used for the illicit manufacture of liquor (R.F. 17–18,

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[1] The symbol "R.R." refers to the printed record in the case on the revocation of probation. The symbol "R.F." will be used to refer to the mimeographed record in the forfeiture case.

[2] The determination of the revocation of probation was made, with the consent of counsel, on the basis of the evidence filed in the forfeiture case (R.R. 12).

20–21, 22, 25, 34)—large quantities of sugar, malt, rye meal and yeast (R.F. 15).

The knowledge as to the purchases came from reports filed by the merchants from whom the materials were purchased and the information received included the license number of the truck to which the materials were delivered (R.F. 15–17, 35).

On May 7, 1957, federal revenue agents happened to see petitioner drive by in his truck. The truck appeared to be heavily loaded (R.F. 14, 20). When petitioner saw the officers, he attempted to hide his face from their view (R.F. 14–15). The officers followed petitioner for a while and noted that the truck bore the license tag number contained in the reports on petitioner's purchases (R.F. 15–17).

Although the officers had known that petitioner had transported the materials in the past, they had no previous knowledge of the present location of the truck and did not know petitioner's address (R.F. 39–40). It was customary in the hauling of materials such as those involved here to dispose of them quickly (R.F. 41).

After following petitioner for a while, the officers stopped him. They asked him what he had in the truck and he said "sugar and malt" "88 bags" (R. 18, 30). He said that he was going to sell the material. When further questioned he said that he had no business or place of business (R.F. 30–31).

The officers then opened the door of the truck and found 8,800 pounds of sugar, 800 pounds of malt sprouts, 150 cases of ½ gallon glass jars and 50 pounds of dry yeast—all materials which are nor-

mally used in the illicit manufacture of whiskey (R.F. 3, 20, 21). The truck and the materials were seized (R.F. 2–3) and a judgment of forfeiture was issued by the district court in November, 1957 (R.F. 60–63).

During the forfeiture trial, which was held without a jury, petitioner filed a motion to suppress on the ground that the search and seizure were illegal. The court in its findings of fact found that the officers had probable cause to make the search without a warrant and that the seized materials were forfeitable. It denied the motion to suppress (R.F. 57–59).

Based on this action, petitioner's probation was revoked (R.R. 9, 21, 22).

## ARGUMENT

The decisions of this Court in *Brinegar* v. *United States*, 338 U.S. 160, and *Carroll* v. *United States*, 267 U.S. 132, establish that a moving vehicle may be stopped and searched without a warrant on probable cause to believe that it is being used in violation of the laws of the United States. The right at issue is the right to search, rather than the right to arrest. Because of the mobile nature of the vehicle, the search, even though without a warrant, is regarded as reasonable under the Fourth Amendment if it is made on probable cause to believe that the vehicle is being used in violation of law.

The probable cause to justify a search has been defined by this Court in *Brinegar* and *Carroll* as facts and circumstances within the knowledge of the officers, or of which they had reasonably trustworthy

information, sufficient to warrant a man of reasonable caution in believing that an offense is being committed. The courts below properly found that the facts and circumstances within the knowledge of the officers at the time of the search here were sufficient to justify the stopping of the automobile. The officers knew, from formal reports filed by merchants, that petitioner had been buying large quantities of materials normally used in making illicit liquor, and that he had been hauling the materials on a truck bearing the license plates observed on the truck at issue. They knew that petitioner was a known liquor violator. They saw that the truck was heavily loaded and noted that petitioner tried to conceal his identity from them. Together, these circumstances were sufficient to meet the "reasonable man" test of *Brinegar* and *Carroll*.[3] They are indeed very similar to the facts held sufficient in *Brinegar* and *Carroll*, and possibly even stronger since here the knowledge of petitioner's activities in buying materials for use in making liquor came, not from an individual informant, but from the reports of the merchants. This information was within the knowledge of the officers before they stopped the car. As in *Brinegar*, the statements by petitioner after the truck was stopped, but before the search, reinforced the probable cause which the officers already had, but there was

[3] This Court has granted certiorari in *Henry* v. *United States*, No. 559, Oct. Term, 1958, also involving the search of a moving vehicle. The circumstances there, however, are so different from those in this case that we do not believe the grant of certiorari in *Henry* bears on the issues here.

ample probable cause without reliance on such statements. There is thus no occasion to review the findings of both courts below.[4]

## CONCLUSION

It is respectfully requested that the petition for writs of certiorari should be denied.

J. LEE RANKIN,
*Solicitor General.*
MALCOLM ANDERSON,
*Assistant Attorney General.*
BEATRICE ROSENBERG,
FELICIA DUBROVSKY,
*Attorneys.*

MARCH 1959.

[4] Since the Court of Appeals found that the motion to suppress had been properly denied on the ground that there was probable cause for the search, the question presented by petitioner, based on dictum in the opinion below—as to whether the truck could have been forfeited even if the motion to suppress had been granted—is not presented by this case. Petitioner has, in any event, misread the decision below. The court below has not held, as petitioner seems to believe, that suppressed evidence could be offered in a forfeiture proceeding. A reading of the cases cited by the Court of Appeals in its dictum (Pet. 14–15) shows that it was referring to the rule that, if there was other evidence that the truck had been used in violation of the revenue laws before it was seized, an infirmity in the method by which the truck was seized would not enable the claimant to get the truck back since title would have already passed to the United States because of the owner's prior illegal action. In this case other evidence of illegal use, independent of that deriving from the seizure, was presented (R.F. 35).

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